



MILPITAS PLANNING COMMISSION STAFF REPORT

January 28, 2015

APPLICATION: Dixon Mart & Liquor – 81 Dixon Rd - UP14-0012 and MS15-0004 - A request for a Conditional Use Permit and Minor Site Development Permit to allow the sale of all types of alcohol at an existing convenience store and to make certain improvements.

RECOMMENDATION: Staff recommends that the Planning Commission adopt Resolution No. 15-004 approving Conditional Use Permit No. UP14-0012 and Minor Site Development Permit No. 15-0004 to allow the sale all type of alcohol and to make certain improvements at 81 Dixon Road, subject to the conditions of approval.

LOCATION:
Address/APN: 81 Dixon Road (APN 26-05-021)
Area of City: N. Milpitas Blvd. and Dixon Rd.

PEOPLE:
Project Applicant: Thuy Vo
Consultant(s): Trieu Nguyen
Property/Business Owner: Thuy Vo
Project Planner: Cindy Hom, Assistant Planner

LAND USE:
General Plan Designation: Retail Sub Center
Zoning District: Neighborhood Commercial (C1)
Overlay District: Site and Architectural Overlay (-S)

ENVIRONMENTAL: Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) and 15304 (Minor Alterations of Land) of the California Environmental Quality Act (CEQA).

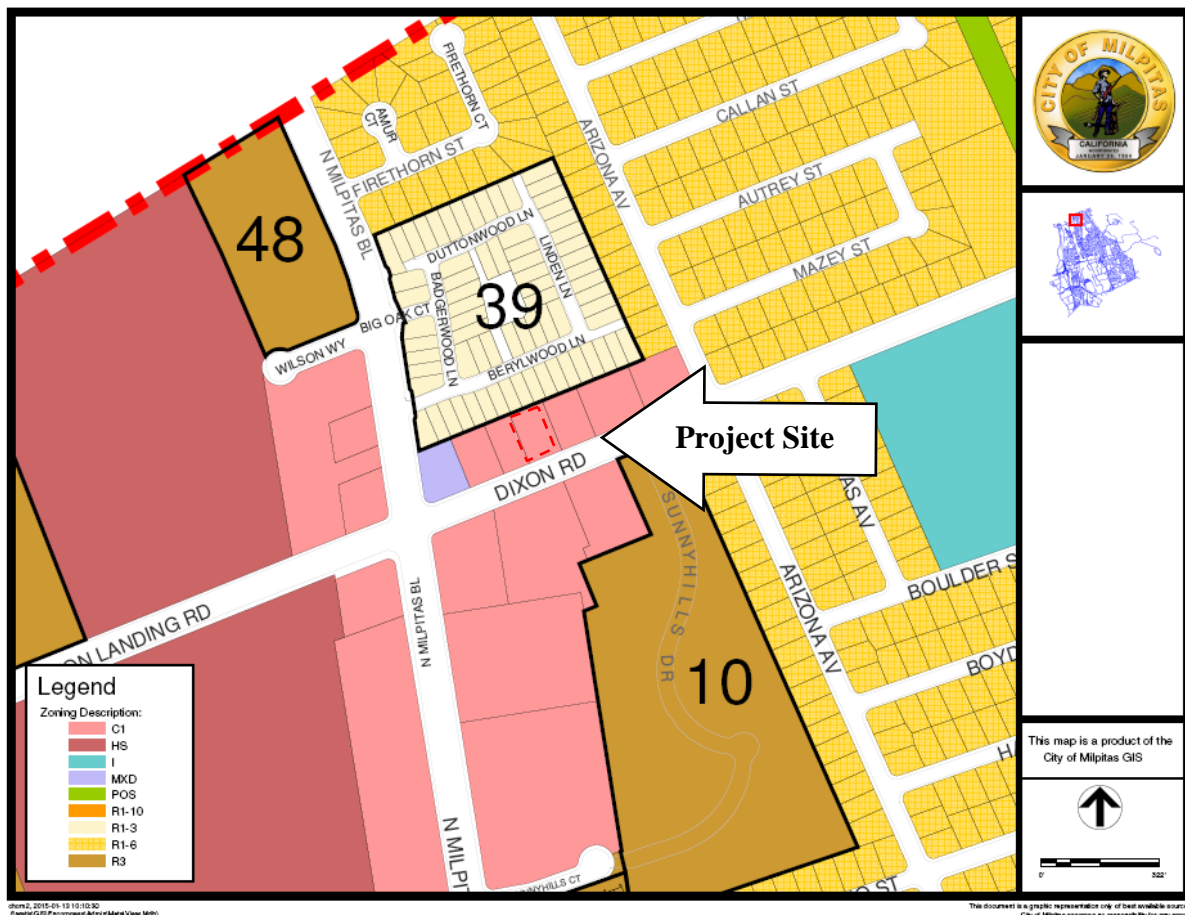
EXECUTIVE SUMMARY

The applicant is requesting a Conditional Use Permit to legalize the current sale of all types of alcohol within an existing convenience/liquor store. In 1973, a conditional use permit (UP No. 249) was approved to allow for food establishment with beer and wine sales. Based on City records, the Dixon Mart and Liquor Store obtained a business license in June 1999 and a Type 21

Off-Sale Permit from the Department of Alcohol and Beverage Control (ABC) for off-site consumption of beer, wine and distilled spirits (liquor). However, the sale of distilled sprits also requires an amendment to the existing Conditional Use Permit (UP No. 249) or a new Conditional Use Permit under the City's Zoning Code. The non-conformity was discovered when there was a request to change business owners and to transfer the ABC permit from the prior owner to the current owner. The request also includes various site improvements to bring the site up to current code standards. The applicant will be providing the following:

- New 314 square foot concrete masonry block trash enclosure
- Repair the public sidewalk along the project frontage and driveway curb to meet handicap accessibility standards.
- Removal of an unpermitted septic tank and installation of a new connection to the City's sewer line.
- Install new on-site landscaping around the perimeter of property.
- Repainting the building.

Map 1 Project Location



Map 2
Project Site

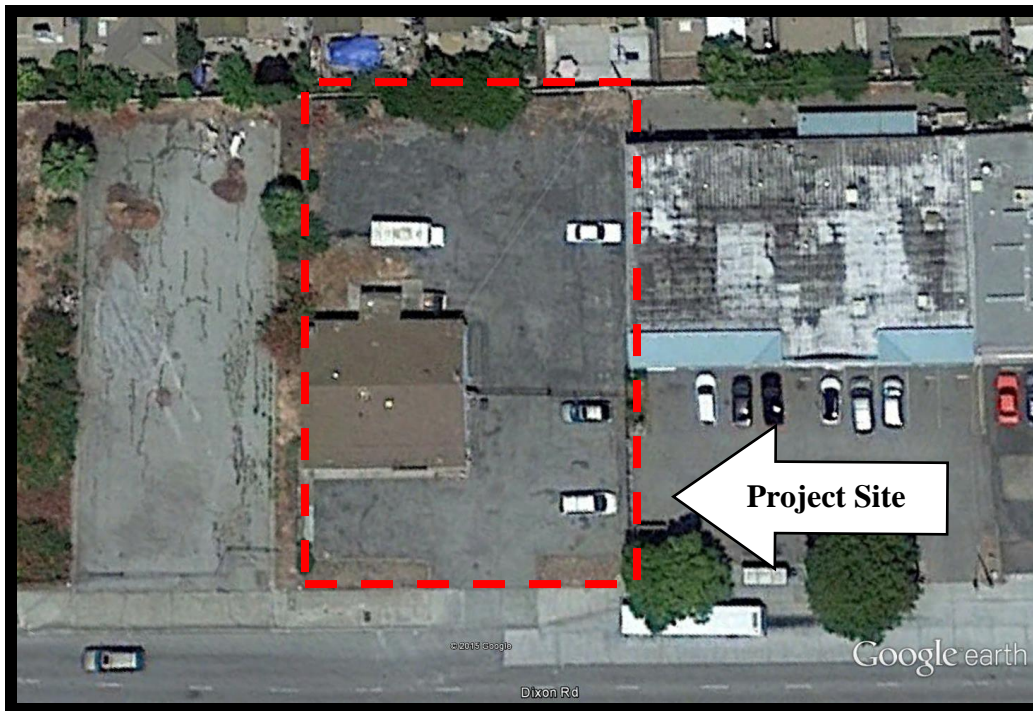
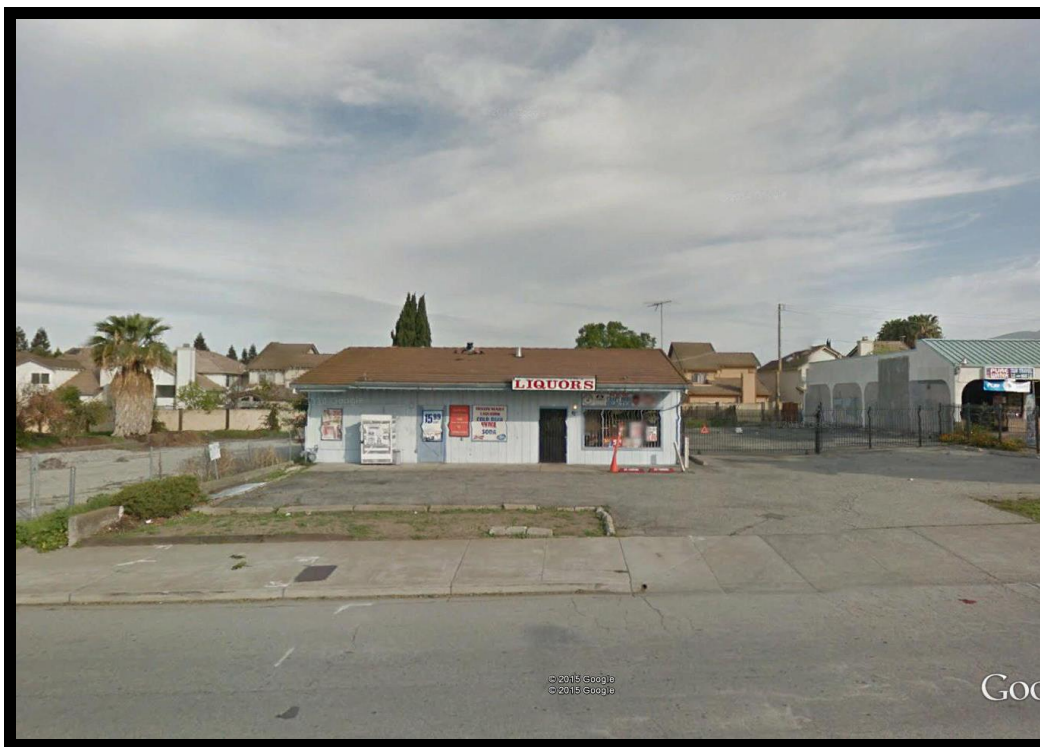


Photo 1



BACKGROUND

History

In November 1971, the Planning Commission granted Site and Architectural Approval and Variance No. 189 for the construction of a 1,700 square foot commercial building. The Variance was to allow encroachment into the required side yard setback.

In February 1972, the Planning Commission granted an Amendment to Conditions of Approval that required concrete shingle roof tiles.

In April 1973, the Planning Commission approved a Conditional Use Permit (UP No. 249) to allow for a restaurant with beer and wine sales.

In June 1999, a City business license was issued for Dixon Mart and Liquor and the California Department of Alcohol and Beverage Control issued a Type 21 ABC permit for the off-site consumption of beer, wine, and distilled spirits.

In August 2011, the Planning Commission approved Conditional Use Permit No. UP11-0018 that allowed for the operations of a mobile recycling unit located on the rear parking lot. The permit was never vested and has since expired.

The Application

On June 6, 2014, Thuy Vo, property and business owner of Dixon Mart and Liquor submitted an application pursuant to Section 57 of the Milpitas Zoning Code that requires Planning Commission review and approval for the following request:

- *Conditional Use Permit:* to allow for sale of all types of liquor for a convenience and liquor store.
- *Minor Site Development Permit:* to construct various site improvements including a new 314 square concrete masonry trash enclosure to comply with the City's trash enclosure design standards and trash servicing requirements; repair the existing public sidewalk and driveway curb to comply with handicap accessibility requirements; removal of an unpermitted septic tank; install a new lateral to the City's sewer line; repainting of the building; removal of three parking space to accommodate accessible parking and new structures, as well as installation of new landscaping around the perimeter of the site.

If approved, Conditional Use Permit No. UP14-0012 would rescind and supersede all previous planning entitlements for the restaurant with beer and wine sales that was granted by Conditional Use Permit. UP 249.

PROJECT DESCRIPTION

Overview

The convenience and liquor store is currently operating within an existing 1,775 square foot commercial building. The proposed Conditional Use Permit would legalize the existing convenience and liquor store use as well as the sale of all types of alcohol that has been occurring since 1999. The proposed Site Development Permit would also allow various site improvements to bring the site into conformance with handicap accessibility and development standards as described above. The existing mart and liquor store currently operates seven days a week from the hours of 10AM to 10PM Monday through Saturday and 9AM to 9PM on Sundays.

Location and Context

The project is located at the mid-block section of the Dixon Road between N. Milpitas Blvd. and Arizona Drive. The 0.32 acre site is currently developed with a 1,775 square foot, one-story commercial building with twelve (12) on-site parking spaces. There are existing landscaping planters along the street frontage, west property line and along the rear yard. However, the current landscaping has not been maintained and/or is missing.

The project has the General Plan designation of Retail Sub Center and zoning designation of Neighborhood Commercial. The site is bounded by Dixon Road to the south, a vacant parcel to the west, single family homes to the north, and a multi-tenant commercial building to the east. Surrounding land use included vacant land to the west, residential homes to the north, and commercial retail and services to the east and south. The Dixon Mart and Liquor is located approximately 261 feet from a church facility and 876-feet from Weller Elementary School. Vicinity and location maps of the subject site location are included on the previous page.

PROJECT ANALYSIS

General Plan and Zoning Conformance

The General Plan Designation for this site is Retail Sub Center. This classification accommodates neighborhood shopping facilities that provide for convenience needs, such as groceries and minor hardgood purchases. The project is consistent with the Retail Sub Center designation in that the project would be neighborhood serving. The convenience store provides various food, convenience, and beverage items to the surrounding residential neighborhood.

The Zoning Designation for this site is Neighborhood Commercial. The purpose and intent of the neighborhood commercial district is to provide for the general commercial needs of neighborhood areas of the City and to promote stable, attractive commercial development which affords a pleasant shopping environment and will complement the essential residential character of the neighborhood. It shall not include uses which generate loud noises or unpleasant odor or establishments which are not open to minors or attract customers or traffic outside of the neighborhood area in which they are located. The project complies with the purpose and intent based on the following:

- Sale of alcoholic beverages is a conditionally permitted use in the Neighborhood Commercial Zoning District.

- The project provides various foods, convenience and beverage items that would cater to the general commercial needs of the neighborhood.
- The project promotes a stable and harmonious commercial use in that the proposed site improvements will enhance the site with new landscaping that consisting of twenty-four (24) inch box trees and various shrubs, an improved public sidewalk with 4-foot by 4-foot tree wells, a new concrete masonry trash enclosure and repainting of the building.
- The project maintains its existing building form, architecture, and site layout that would complement adjacent properties in terms of building setbacks, height, and architectural style. Additionally, the project would install a row of twenty-four (24) inch box Podocarpus trees that provides a natural screen between the project and residential homes. The trash service area would be concealed behind a new concrete masonry enclosure which will not be visible from the public street. The public street frontage would also be improved with new landscaping and two new twenty-four (24) inch box street trees.
- The project will not generate any objectionable noise or odor since it's an existing retail store selling convenience items and alcohol and does not have a history of being a public nuisance.
- The Department of Alcoholic Beverage Control's Type 21 Permit for off-site sale of beer, wine, and distilled spirits allows minors on the premises. Although alcohol is sold on the premises, other food and convenience items are also sold. In consultation with the Milpitas Police Department, the following conditions of approval have been included:
 - Video surveillance cameras to be installed to provide security coverage of the parking lot
 - Responsible alcohol training for all employees
 - No loitering signs to be installed on the premises and enforced by applicant
- The existing use is not a regional attraction that would bring customers or traffic from other areas to this location.

Climate Action Plan Conformance

The Climate Action Plan (CAP) provides a policy framework for the City to reduce community-wide Greenhouse Gases emissions. Through the CAP, the City establishes mitigation strategies to address climate change. The project does not propose any major construction or building addition that requires conformance to the City's Climate Action Plan, however, the project is consistent with Measure 5.1 (Urban Cooling) in that nine (9) new trees are proposed to be installed that would help reduce heat gain by providing shade over asphalt concrete areas.

Development Standards

The project complies with the Neighborhood Commercial development standards as demonstrated in the table below:

Table 1:
Summary of Development Standards

	Standard	Existing	Complies?
<u>Setbacks</u> (Minimum)			
Front	20 feet	40 feet	Yes
Interior	0 feet,	3 feet	Yes
Rear	15 feet	45 feet	Yes
<u>Floor Area Ratio</u> (Maximum)	0.35	0.13	Yes
<u>Building Height</u> (Maximum)	35'	15-foot 2-inches	Yes

Site & Architectural Design

The existing building is designed as a one-story building ranch style building with vertical wood siding on all four elevations. The applicant is proposing to repaint the building. Staff recommends as conditions of approval that the applicant utilize muted earth tone colors. Prior to building permit issuance, the applicant shall submit a color sample and color scheme exhibit for Planning Division's review and approval and removal of all temporary advertising signs and banners.

Landscaping Design

The applicant is proposing to install new landscaping along the south, west and north property lines. The proposed landscaping includes seven (7) Podocarpus trees along the rear property line, two (2) Crape Myrtle trees that will be installed within the street tree well. A mix of Bear's Breach, Lily of the Nile and Manzanita shrubs would be installed in the front landscaping planter areas and along the west property line. Staff has included the following conditions of approval:

- Install two additional twenty-four inch box Crape Myrtle trees in the planting area located at the southeast corner of the lot.
- Replace the Podocarpus Chinese Yew tree with the Podocarpus Fern Pine tree type.
- Replace the two Crape Myrtle street trees with twenty-four inch box Tristania Conferta trees.
- Provide a three-inch mulch layer to all planting areas to conserve moisture, improve soil fertility, reduce weed growth and enhance the visual appeal of the area.
- Incorporate a two and a half (2 ½) foot wide curbed planting strip along the east edge of the property that includes three new Crape Myrtle trees and a two and a half (2 ½) foot wide planting strip along the building on the west elevation.

Parking

The project complies with the Milpitas parking requirement by providing the nine (9) parking spaces required for the retail use based on a parking ratio of one space per 200 square feet of use. A parking summary is provided in Table 2 below:

Table 2:
Parking Requirements

Use	Sq. Ft.	Parking Ratio	Number of Spaces Required
Retail	1,775	1/200	9
Total Required			9
Total Provided			9

Access & Circulation

Existing vehicle access to the site is provided by a two-way driveway off of Dixon Road. There is also an existing public sidewalk that provides connectivity to adjacent commercial centers and residential uses. The project proposes to repair the existing public sidewalk along its street frontage to comply with city standards and accessibility requirements.

Utilities

The project proposes a minor utility upgrade. The project will be removing an unpermitted septic tank and adding a new 3-inch lateral connection to the City's sewer line.

ABC Licensing

The applicant is requesting a Type 21 Off-Sale General License which authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises. The sale of alcohol in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The California Department of Alcoholic Beverage Control is required to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area, unless the local governing body finds that it would serve the public convenience or necessity. An undue concentration is defined under Business and Profession Code Section 23958.4 as an area where: (a) there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction or (b) the ratio of retail licenses of the type applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

According to the Department of Alcohol Beverage Control, the project falls within in an undue concentration area for liquor licenses which authorizes two (2) off-sale permits (off-site consumption) and four (4) on-sale permits (on-site consumption). Currently, there are three (3) off-sale permits which include: La Noria Liquor (108 Dixon Rd), Lion's Supermarket (1838 N. Milpitas Blvd) and the permit for the Dixon and Mart Liquor store (81 Dixon Rd.) and eight (8) on-sale permits. In order for the Department of Alcoholic Beverage Control to grant the pending

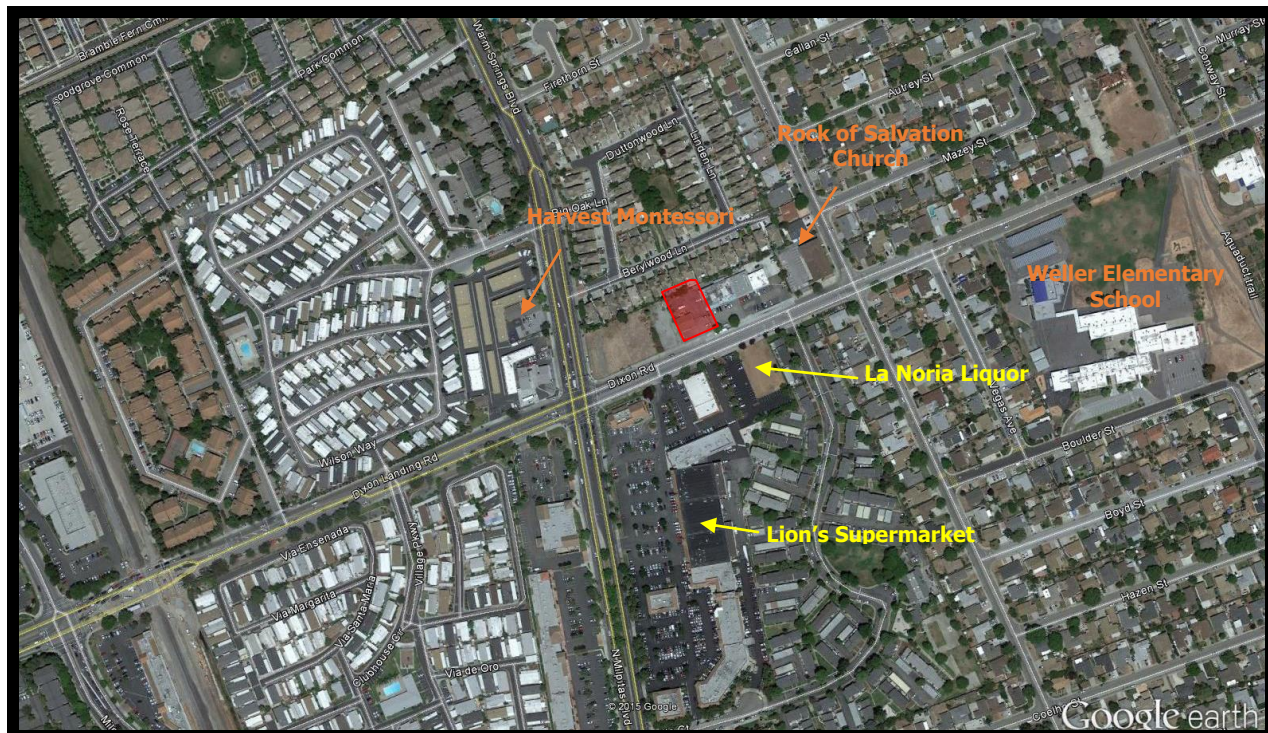
license application, the Planning Commission is required to make a finding pursuant to Business and Profession Code Section 23958.4 that sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

A determination for public convenience or necessity can be made based the below analysis:

- The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a neighborhood convenience and customer experience.
- The Dixon Mart and Liquor is not located within 500-feet of any public or private elementary, primary, high school, college, university or public park. However, it is located within 460-feet of a Montessori preschool childcare center, provided the proposed liquor store and the Montessori preschool is separated by N. Milpitas Blvd., a major street arterial (4-lane roadway).
- The proposed use is not located closer one hundred fifty feet from any residentially zoned property measure from the project site to the front door of closest, adjacent residential unit.
- The proposed hours of operations would not cause disruption or the quiet and peaceful enjoyment of the neighborhood. The mart and liquor store operates seven days a week from the hours of 10AM to 10PM Monday through Saturday and 9AM to 9PM on Sundays.

A location map is provided below showing the location of other establishments that have Type 21 off-sale permit (indicated in yellow) and sensitive receptors (indicated in orange).

Location Map



FINDINGS FOR APPROVAL (OR DENIAL)

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit Findings (Section XI-10-57.04 (F)):

- i. *The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

Since 1999, the Dixon Mart and Liquor Store held an active business license and Type 21 Off-Sale Permit from the Department of Alcohol and Beverage Control (ABC) for off-site consumption of beer, wine and distilled spirits (liquor). The Neighborhood Commercial Zoning District requires a conditional use permit for the sale of alcoholic beverages. The non-conformity was discovered when there was a request to change business owners and to transfer the ABC permit.

In review of the property for City code violations, the property was cited on two occasions for zoning violations in the past 20 years. The first code violation was issued in May 1996 for storage of U-Haul trucks on the premise. The Notice of Violation was abated in December 1996. The second code violation was issued in July 2012 for vehicle storage of an RV camper, boat, and tent structure. The structures were removed and the code enforcement case was closed in July 2012. To date there are no open violations.

The Milpitas Police Department reviewed the application request, project plans, and previous calls for service and has stated they are neutral to the issuance of the conditional use permit application. The project location is not located in a high crime rate area. There are no significant operational issues that have been identified by the Milpitas Police Department. Based on the types of calls for services has been related to transients, pedestrian stops, and disturbances on or around the premises. There were a total of sixteen (16) police incidents reported in 2014. Five (5) of sixteen (16) calls were police initiated service calls.

As conditioned, the applicant shall be required to provide the following measures:

- Responsible Alcohol Training - The operator shall be responsible for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request.
- Liter and Graffiti Prevention - Pick up litter and abate graffiti on a daily basis.
- Security Video Surveillance System - Install video surveillance camera(s) to monitor and provide complete coverage of the parking areas. Prior to occupancy, the applicant shall be detail and manufacturer's specification for a video surveillance security system for Police Department review and approval. Video recordings shall be retained for a minimum of 30 days. The applicant shall make them available to law enforcement for review and copying upon request.

- No Loiter Signs: Applicant will display information signs to remind customers not to loiter and prohibit any drinking of alcohol on the property.

As conditioned, the project is not anticipated to negatively impact property, improvement or public safety and general welfare based on the following:

- The project provides various foods, convenience and beverage items that would cater to the general commercial needs of the neighborhood.
- The project promotes a stable and attractive commercial in that the proposed site improvements enhances that site with new landscaping that includes fourteen (14) twenty-four (24) inch box trees and various shrubs, an improved public sidewalk with 4-foot by 4-foot tree wells, a new concrete masonry trash enclosure and repainting of the building.
- The project maintains its existing building form, architecture, and site layout that would complement adjacent properties in terms of building setbacks, height, and architectural style. Additionally, the project would install a row of twenty-four (24) inch box Podocarpus trees that provides a natural screen between the project and residential homes. The trash service area would be concealed behind a new concrete masonry enclosure which will not be visible from the public street. The public street frontage would also be improved with new landscaping and two new twenty-four (24) inch box Crape Myrtle street trees.
- The project will not generate any objectionable noise or odor since it's an existing retail store selling convenience items and alcohol.
- The existing use is not a regional attraction that would bring customers or traffic from other areas to this location.

ii. *The proposed use is consistent with the Milpitas General Plan*

The project is consistent with the Retail Sub Center General Plan designation in that the land use provides for the general commercial needs of the surrounding neighborhood. The project is an existing convenience mart selling food items, convenience goods, and alcoholic beverages. The project includes various site and building improvements that would enhance the site and create a pleasant shopping environment. The project also provides opportunity for business retention, employment opportunities, and encourages economic pursuits for small businesses which are consistent with the following General Plan Policies:

- Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

iii. *The use is consistent with the Milpitas Zoning Ordinance*

The project is consistent with purpose and intent of the Neighborhood Commercial Zoning District in that the proposed convenience items and alcoholic beverage sales would serve the general commercial needs of the neighborhood. The project will not create any objectionable noise or odors. Furthermore, the land use is not a regional attraction and will not generate customers or traffic outside of the neighborhood it serves. As described above, the project

also complies with the development standards and parking requirements. The approval of the conditional use permit would also legalize the existing alcohol sales.

Site Development Permit (Section XI-10-57-03-1(F))

- i. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project is consistent with this finding because the project promotes a stable commercial development that is compatible and harmonious with the surrounding properties. The project includes site improvements that improve and enhance the overall appearance of the site with new landscaping. As conditioned, the project would provide fourteen (14) twenty-four (24) inch box trees and various shrubs. The project would also improve a public sidewalk to conform to city standards, install a new concrete masonry trash enclosure that would keep the trash service area out of the public view, and update the building with new paint color. The project maintains its existing building form, architecture, and site layout that would complement adjacent properties in terms of building setbacks, height, and architectural style.

- ii. *The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with the Milpitas Zoning Ordinance as described above.

- iii. *The project is consistent with the Milpitas General Plan.*

The project is consistent with this finding as described above.

Department of Alcoholic Beverage Control Findings pursuant to Business and Profession Code Section 23958.4:

- iv. Based on staff's analysis, the following findings can be made that the project will not be detrimental to the surrounding area and serves the public convenience or necessity because:
- The existing mart and liquor store is not located within a crime reporting district.
 - There are no existing violations against the property or Applicant that would discourage the issuance of a Type 21 alcohol license.
 - As conditioned, the applicant shall be required to obtain training for responsible alcohol serving and incorporate measures such as video surveillance and signage to discourage loitering.
 - The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a neighborhood convenience and customer experience.
 - The Dixon Mart and Liquor is not located within 500-feet of any public or private elementary, primary, high school, college, university or public park. However is within 460-feet of a Montessori preschool childcare center provided the two uses would be separated by N. Milpitas Blvd., a major street arterial (4-lane roadway).

- The proposed use is not located closer one hundred fifty feet from any residentially zoned property measure from the project site to the front door of closest, adjacent residential unit.
- The proposed hours of operations would not disruption the quiet and peaceful enjoyment of the neighborhood. The mart and liquor store operates seven days a week from the hours of 10AM to 10PM Monday through Saturday and 9AM to 9PM on Sundays.

The following conditions will added: Video surveillance cameras to be installed to provide security coverage of the parking lot, responsible alcohol training for all employees, and No loitering signs to be installed on the premises and enforced by applicant

ENVIRONMENTAL REVIEW

The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 (Existing Facilities), 15304 (Minor Alterations to Land) and 15344 (Accessory Structures) of the CEQA Guidelines, Existing Facilities. The project is a request to permit the sale of all types of alcohol to an existing mart and liquor store. The project also includes minor site modifications that include repairing an existing public sidewalk and drive to comply with city standards and accessibility requirements; removal of an unpermitted septic tank; and installation of a new 3-inch sewer lateral, landscaping consisting of twenty-four inch box trees and shrubbery, and a 314 square foot concrete masonry trash enclosure.

PUBLIC COMMENT/OUTREACH

Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on January 16, 2015. In addition, 504 notices were sent to owners and occupants within 1,000 of the project site. Staff received comments in opposition of the project. One was received over the phone and a second comment was received via email. A copy of the email is included as an attachment to the staff report. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall.

CONCLUSION

The project would legalize the existing convenience mart and liquor store that has been in operation since 1999. The project is consistent with the General Plan and Milpitas Zoning Ordinance in terms of land use and development standards in that alcohol beverage sales are conditionally permitted use in the Neighborhood Commercial Zoning District. The project also provides a public convenience in that the Dixon Mart and Liquor is neighborhood service and provides for convenience items that include food, sundries, and alcoholic beverages.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing; and

2. Adopt Resolution No. 15-004 approving Conditional Use Permit No. UP14-0012 and Minor Site Development Permit No. MS15-0004 for the sale of alcohol and site improvements at 81 Dixon Road, subject to the above findings and the attached conditions of approval.

ATTACHMENTS

- A: Resolution No. 15-004
- B: Project Plans
- C. Comment Letter